IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13152 of 2004

Between:

Tulabandula Srikrishna, S/o Sambasiva Rao,
R/o H.No.12-102, Kolakalur Village, Tenali Mandal, Guntur District

..... PETITIONER

AND

1 The State Election Commission, Buddha Bhawan, Tank Bund Road,

Hyderabad, rep.by its Secretary
2 The Election Officer / Mandal Parishad Development Officer, Kollipara,

Tanali Mandal, Guntur District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus: i) declaring the order of the respondent authorities in Notification dated 23-7-2004 for elections to the office of the Sarpanch of Kolakalur Gram Panchayat, Tenali Mandal, Guntur District, as arbitrary, illegal and contrary to the provisions of the A.P.Panchayat Raj Act and Rules made thereunder and consequently set aside the same.

Counsel for the Petitioner:MR.A.SUDERSHAN REDDY

Counsel for the Respondents: MR.K.G.K.PRASAD

The Court at the admission stage made the following :

ORDER:

The petitioner is a resident of Kolakalur Village, Tenali Mandal, Guntur District. Elections to the Office of the Sarpanch of the said Village were held. The Sarpanch of the said Village died resulting in casual vacancy to the Office of the Sarpanch. Therefore, Election Notification was issued by first respondent and consequently election schedule was fixed by second respondent on 23.7.2004. This is challenged in the Writ Petition.

The case of the petitioner is that serious irregularities were crept in in preparation of voters' list, in that, more than five hundred voters, who were issued identity cards by the Election Commission of India, were included not included in the voters' list for the present election. According to the learned counsel, if the election is allowed to go on without inclusion of valid voters in the electoral list, the same would be illegal and contrary to law.

It has been repeatedly held by a catena of decisions of the Supreme Court that ordinarily election process cannot be challenged in Writ Petition, especially after issue of Election Notification. In Writ Petition Nos.22277 and 22293 of 2003, dt.29.10.2003, I have referred the decisions of the Supreme Court as well as this Court in ***N.P.Ponnuswami v. Returning Officer***, ***Meghraj v. Delimitation Commission, P.Mastanaiah v. Delimitation Commissioner, New Delhi***, ***Pradhan Sangh Kshetra Samiti, Jabalpur v. State of U.P, State of U.P. v. Pradhan Sangh Kshetra Samiti, Lakshmi Charan Sen v. A.K.M.Hassan Uzzaman, Gujarat University v. N.U.Rajguru, Anugrah Narain Singh v. State of U.P.*** , and ***C. Subrahmanyam v. K. Ramanjaneyulu,*** and summarized the principles governing

the judicial review under Article 226 of the Constitution of India in election matters as under:

i. If the election law creates rights and provides for enforcement by a Special Tribunal, ordinarily, a Writ Petition cannot be maintained questioning election process including preparation of voters' list.

ii. When an election dispute is considered, it must be kept in mind that the right to vote, contest or dispute the election is neither fundamental right nor a common law right, but is a right regulated by statutory provisions. It is therefore not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India by-passing the machinery designated by the relevant Act. Ordinarily, the remedy provided by the Statute must be followed before the authority designated therein.

iii. When the election process is set in motion by issuing election notification, all the disputes including illegalities, irregularities and improprieties allegedly committed by the election authorities in preparing the voters list, conducting elections, counting votes, etc., should be brought before a Special Tribunal by means of an election petition and Writ Petition is not proper remedy.

iv. In exercise of powers under Article 226 of the Constitution this Court cannot ordinarily interfere in election matters whatever be the illegality alleged when once the election process is commenced by issuing a direction to include the names of certain voters, delete certain voters and/or undertake the exercise of preparation of voters list afresh.

v. Even if the claims and objections by prospective voters are not finally disposed of and even if the objections are justified as to the allegations and contraventions of law, still the election process cannot be arrested. The elections must be allowed to go on on the basis of electoral list which is in force on the date of making nominations;

vi. Even if there is non-compliance with the provisions of the Act, Rules or Orders made under the Act, the dispute has to be brought before the duly constituted Election Tribunal. Even in such an event, the Election Tribunal can interfere with the result of the election only when it materially affects the result of the returned candidate.

Further, as per Section 233 of the A.P.Panchayat Raj Act, 1994, no election held under the said Act shall be called in question except by election petition presented to duly constituted Election Tribunal. The petitioner is therefore given liberty to approach the Election Tribunal after completion of the election process. The Writ Petition cannot be entertained.

The Writ Petition, with the above observations, is dismissed. No costs.

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(V.V.S.RAO, J)

28.7.2004

bnr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The State Election Commission, Buddha Bhawan, Tank Bund Road,

Hyderabad, rep.by its Secretary
2 The Election Officer / Mandal Parishad Development Officer, Kollipara,

Tanali Mandal, Guntur District

3. 2 CCs to Sri K.G.K.Prasad, SC for Election Commission

4. 2 CD copies